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MARK J. DAVIS

January 24, 1993

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JAN 26 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

(504) 581-2885

FAX (504) 525-5094

Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Gentlemen:

Enclosed for filing, on behalf of The City of New Orleans,
are the original and five copies of reply comments in MM Docket
No. 92-263.

Please call me directly if there are any questions regarding
this matter.

Very truly yours,

WILLIAM T. ABBOTT, JR.

WTA,JR/rm

Enclosures

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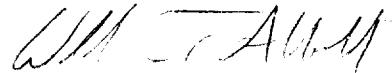
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN THE MATTER OF)
)
IMPLEMENTATION OF SECTION 8) MM DOCKET NO. 92-263
OF THE CABLE TELEVISION)
CONSUMER PROTECTION AND)
COMPETITION ACT OF 1992)

TO: THE COMMISSION

REPLY COMMENTS OF
THE CITY OF NEW ORLEANS

The City of New Orleans ("New Orleans") hereby submits these reply comments to address issues raised in comments, or suggested by The Federal Communications Commission ("the FCC" or "the Commission") in its December 11, 1992 Notice of Proposed Rulemaking, FCC 92-541, in this proceeding. New Orleans is the franchising authority for a single non-exclusive 93,000-subscriber cable television franchise, held since 1981 by Cox Cable New Orleans. New Orleans administers and regulates its franchise through its Department of Utilities in conjunction with its elected City Council.

SUMMARY OF REPLY COMMENTS

I. Based on its regulatory experience, New Orleans supports the proposals made in comments by the National Association of Telecommunications Officers and Advisors, the National League of Cities, the United States Conference of Mayors and the National Association of Counties,

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(collectively "Local Governments"). Specifically, New Orleans urges the Commission to adopt self-executing, locally enforced standards for customer service applicable automatically to all cable systems, with provision for unilateral adoption of more stringent standards by local franchising authorities. New Orleans further urges the Commission, as it formulates new standards, to reject as inadequate the voluntary standards proposed by The National Cable Television Association ("The NCTA").

II. The Proposal of Local Governments.

In their comments, local governments offer the Commission a comprehensive and well considered structural solution to the widely varied customer service problems experienced by New Orleans and many other medium sized cities with cable franchises granted before enactment of The Cable Communications Policy Act of 1984. ("the 1984 Act").¹

Prior to the 1984 Act, (and until 1987) local franchising authorities often had rate regulation as an

1. Pre-Act franchises, based on those informally surveyed by New Orleans, generally fail to anticipate customer service issues which have arisen since widespread use of addressable converters, scrambled programming, and pay-per-view. Moreover, such franchises vary widely in the regulatory power over cable granted to local government. New Orleans franchise, for example, contemplates aggressive local administration, albeit based on 1981 standards; some other franchises apparently contemplate that good service will result primarily from suits threatened or filed by cable subscribers.

effective means of assuring reasonably satisfactory levels of customer service, regardless of whether their franchise had meaningful consumer protection mechanisms. Without rate regulation, however, cities lacking specific pre-existing consumer protection mechanisms, were often left powerless to protect subscribers, and have remained so, unless in the intervening years, their franchises have been renegotiated as the result of transfers or renewals.

Now, as Congress has recognized, the time has come for national standards, and Local Governments have offered the most reasonable approach possible as to how those standards should be developed and applied.

It should be obvious, New Orleans believes, that Congress' goal of a national policy will not be achieved unless the Commission adopts self-executing standards. The alternative would be to force all franchising authorities into unpredictable and possibly misinformed debates over what can reasonably be expected from their cable franchisees. Some franchising authorities, such as New Orleans, are experienced and could be expected to produce regulations responsive to particular local needs. Other franchising authorities, particularly in small communities, inevitably will lack comparable resources and thus may or may not be successful in adopting regulations of any kind.

New Orleans also shares the view of Local Governments that primary regulatory jurisdiction should be local, with

appeals, if necessary, to the FCC as a final arbiter of national policy. Such an approach would be particularly relevant to regulatory disputes arising from the exceptions, urged by Local Governments, to a single self-executing national standard.

New Orleans will address only one of the three exceptions urged by Local Governments - the right of franchising authorities to unilaterally adopt local standards more stringent than the national standards adopted by the Commission.

Even beyond the legal arguments made by Local Governments supportive of this right, there is a strong public policy consideration in its favor. Local franchising authorities are uniquely qualified to know if additional or different regulation is necessary to protect local consumers or to respond to their unique needs. While a national standard is certainly desirable, cable, at least to subscribers, is a local business usually with an effective monopoly on program distribution. In some instances, a franchising authority may have sufficient bargaining leverage to obtain needed local customer services through franchise renegotiations. Far more likely, however, it will face a brick wall built on monopoly power. Accordingly, local subscribers can only be adequately served if, within limits set by the Commission, and in conjunction with an appellate procedure, franchising

authorities are allowed to unilaterally adopt additional or more stringent standards. New Orleans now has such standards under consideration, and a copy is provided herewith as Exhibit "A".

III. The NCTA Proposal.

The NCTA's approach to customer service is an unashamed argument against a national policy and in favor of the status quo - voluntary adherence to its own protective guidelines. Indeed, the NCTA would appear to be fighting again the battle that it so recently lost in Congress. Just as in Congress, its arguments should be rejected by the FCC.

In its comments, the NCTA straightforwardly states its rationale:

"...The ultimate process by which a cable operator achieves customer satisfaction is really irrelevant; it is the result that matters. Operators whose customers are satisfied should not be required to meet artificial performance criteria" NCTA Comments, p 2.

But what does satisfaction mean to the cable industry? It cannot realistically be measured by consumers discontinuing service, because in most local markets, subscribers have no viable alternative, and cannot reject cable if they want to continue to receive the variety programming that only cable now provides.

Indeed, all that a dissatisfied subscriber can do is complain to Congress or his local franchising authority.

It is largely in response to these complaints that Congress enacted the 1992 Cable Act, and as stated above, local franchising authority should have the power to respond with local regulation, more stringent, if appropriate, than even FCC's national standards.

IV. National Standards.

New Orleans does not propose a specific national standard. Instead it urges that in formulating standards the FCC should rely on standards such as those under consideration in New Orleans, and those now in effect in other cities, as provided by Local Governments.

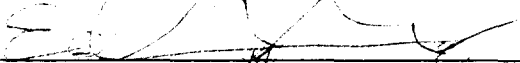
V. Conclusion.

New Orleans believes that the Commission, in meeting the consumer protection mandate of Congress, should be guided by the comments of Local Governments, the meaningful representatives of consumers in cable regulatory matters. Self executing national standards, with local enforcement, should be adopted with exception for the differing standards adopted by franchising authorities.

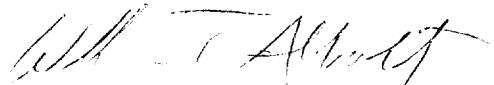
January 23, 1993

Respectfully Submitted

The City of New Orleans



Edward M. Morris, Director
Department of Utilities



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